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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-939

DELAWARE STATE COLLEGE, *et al.*,
Petitioners,

v.

COLUMBUS B. RICKS,
Respondent

On a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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BRIEF OF THE AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS AS AMICUS CURIAE

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BRIEF OF THE AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS AS AMICUS CURIAE

INTEREST OF AMICUS

The American Association of University Professors (AAUP) was founded in 1915 to advance the standards, ideals and welfare of teachers and research scholars in universities and colleges. Since its inception, the Association has formulated Statements, frequently in concert with other national organizations, intended to establish minimum standards of institutional practice in higher education. Paramount among these is the *1940 Statement of Principles on Academic Freedom and Tenure* (1940 Statement), drafted jointly with the Association of American Colleges (AAC) and currently endorsed by over 100 educational organizations and learned societies. To a large extent, Association standards are recognized

and relied on by faculties, administrations, and governing boards in institutions of higher education.

The instant case concerns the procedures used within a college or university in the nonrenewal of a nontenured faculty member. National norms concerning termination procedures have been offered in the joint AAC-AAUP *Statement on Procedural Standards in Faculty Dismissal Proceedings* and in the AAUP's *Statement on Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments.* Also of relevance is the *Statement on Government of Colleges and Universities,* authored jointly by the AAUP, the American Council on Education and the Association of Governing Boards of Universities and Colleges. The latter Statement sets forth the nature of shared responsibility and cooperative action among the components of the academic institutions. *Amicus* AAUP intends to apprise the court of the nature of the decision-making in higher education, and to suggest the consequences that ought to flow from it in response to the question of timely filing of Title VII claims.

As an organization deeply interested in the academic employment relationship and as an organization actively involved in the mediation of disputes between professors and their institutions, the Association believes it is uniquely situated to address this Court as *amicus curiae* in the present litigation, which is concerned with when a professor must seek remedies through the administration or judicial systems rather than within the academic community.

FACTS AND PROCEDURAL HISTORY

Professor Columbus B. Hicks, a black male Liberian, was appointed to the faculty of Delaware State College beginning in September of 1970. He served as Professor of Education and Coordinator of Science Education. His was a probationary, non-tenured position with renewable year-to-year contracts. In February, 1973, the College's

faculty Committee on Promotions and Tenure considered and denied Ricks tenure. He was offered another one-year contract and informed that he would be reconsidered for tenure during the following year. In February, 1974, the Committee on Promotions and Tenure again considered Ricks for tenure and recommended that he not be awarded tenure. The Committee also recommended that Ricks should be offered a terminal-year contract in accordance with school policy. The Board of Trustees of the College met on March 13, 1974, and accepted the recommendation of the Committee.

A series of internal grievances and requests for review were subsequently pursued by Ricks. In late March, 1974, Ricks petitioned the President of the College to reconsider the denial of tenure. The President refused to reconsider. Ricks also petitioned the Board of Trustees for a hearing on the denial of tenure. In April, 1974, the Board confirmed the denial of tenure. In May, 1974, a post-denial of tenure hearing was held by the Board's Education Policy Committee. This Committee determined that the denial of tenure was proper. In June, 1974, the Board notified Ricks of his terminal contract which would expire on June 30, 1975. In September of Ricks' terminal academic year the Board again notified him that it would not reverse the tenure denial decision of February, 1974. On April 4, 1975, Ricks filed a charge of employment discrimination with the Equal Employment Opportunity Commission (EEOC). Ricks' employment with the College ended on June 30, 1975.

The EEOC issued a right-to-sue letter to Ricks on July 6, 1977. On September 9, 1977, he filed a six-count complaint which alleged, inter alia, discrimination in violation of Title VII and § 1981. The District Court dismissed all claims, ruling that the Title VII claim was not filed within 180 days after the alleged unlawful employment practice occurred as required by 42 U.S.C.

§ 2000e-5(e). The § 1981 claim was barred by the applicable statute of limitations. On appeal, Ricks challenged the dismissal of the Title VII and § 1981 claims. The United States Court of Appeals for the Third Circuit held that both the 180-day time requirement of 42 U.S.C. § 2000e-5(e) and the applicable 42 U.S.C.A. § 1981 statute of limitations began to run on the date the terminal year contract expired. This Court granted certiorari on February 15, 1980.

ISSUE PRESENTED

Whether, in the case of the nonrenewal of a nontenured college professor, the Title VII 180-day filing requirement and the appropriate § 1981 statute of limitation begin to run on the date of actual termination of employment.

SUMMARY OF ARGUMENT

The United States Court of Appeals for the Third Circuit is correct in holding that the 180-day filing period required by 42 U.S.C. § 2000e-5(e) does not begin to run until the employee knows, or a reasonable person should know, that the employer has made a final decision to terminate his employment, and the employee ceases to render further services to the employer.

It is the position of *amicus* AAUP that the protection of the autonomy of the decisionmaking and review procedures of institutions of higher education requires starting the 180-day time period on the date a faculty member's employment relationship with his or her academic institution ends. Policies and procedures that control the termination of the academic employment relationship traditionally attach great significance to internal decision and review procedures that call for multi-faceted collegial decisionmaking and opportunity for review following initial negative personnel decisions. Notice of a negative

tenure decision, if contested, triggers this review process. By viewing the last day of employment as the date the 180-day period begins to run, this court can reinforce the policy of judicial deference to these internal goverance mechanisms without abdicating oversight of possible unlawful behavior.

During the terminal period of employment following an adverse tenure decision, a faculty member's relationship to the academic institution remains unchanged. It is at the end of the period of employment that the important change in status that is relevant to the running of the 180-day filing requirement takes place. To hold otherwise, by requiring a mandatory pursuit of a Title VII claim before the end of employment, would call for an expenditure of time and energy at the expense of one's teaching, research and university service. By starting the period only at the end of the employment, the Court would recognize the nature of a faculty member's status during a terminal period of employment and thereby increase the possibility of internal resolution without harm to the defendant university and decrease the probability of litigation. In addition, there would be a specific date known to all parties from which the 180-day period would run.

Because the 180-day period is treated as a statute of limitation, the filing period can be tolled until the last day of employment even if the court looks to an earlier date than the end of employment as the relevant time for the running of the 180-day period. The possibility of a modification of a decision through the internal review mechanism, and the continued academic responsibilities of a faculty member during a terminal appointment, justify tolling of the statute of limitations. Furthermore, the policy of protecting defendants from stale claims is not subverted by a tolling of the time period, and the humane and remedial policy behind the Civil Rights Act of 1964 would be enhanced.

ARGUMENT

I. The Court Of Appeals For The Third Circuit Was Correct In Holding That The 180-Day Time Period For The Filing Of Title VII Claims By College Professors Begins To Run On The Last Day Of Employment.

A. *The Third Circuit's Holding Protects Institutional Autonomy And Facilitates Judicial Review.*

This court and others, in numerous cases, have given deference to the internal decisionmaking procedures of colleges and universities. *N.L.R.B.* v. *Yeshiva University*, —— U.S. ——, 63 L. Ed. 2d 115 (1980); *Regents of the University of California* v. *Bakke*, 438 U.S. 265 (1978); *Board of Curators of the University of Missouri* v. *Horowitz*, 435 U.S. 78 (1978); *Kunda* v. *Muhlenberg College*, No. 79-1135 (3rd Cir., filed Feb. 19, 1980); *Powell* v. *Syracuse University*, 580 F.2d 1150 (2nd Cir. 1978). The American Association of University Professors (AAUP) in its 65-year history has played a central role in the development and promulgation of widely accepted standards and procedures that provide the foundation for decisionmaking in the academic community. These standards and procedures emphasize the importance of institutional review as a means of dispute resolution. Preliminary reliance on institutional review before the termination of employment is particularly appropriate in Title VII cases, where the review may determine the existence and cure the effects of discriminatory practices.

Joint and multileveled decisionmaking characterize the prevailing academic employment practices in American higher education. The national Commission on Academic Tenure in Higher Education, which was jointly sponsored by the AAUP and the Association of American Colleges, and whose composition included faculty members, college presidents, and trustees, explained:

> In the academic profession, as in other professions, it is the professionals (the faculty, led by its tenured

> members) who decide on admission to the profession, on fitness to continue, and on advancement through the professional reward system. Within the institution, the faculty, acting directly or through its representatives, makes the crucial decisions or recommendations concerning appointment, reappointment, and award of tenure, and concerning salaries, promotions, and other emoluments. This is the prevailing situation in higher education, even though legal authority is exercised by governing boards, usually on the basis of recommendation by college and university presidents. *Faculty Tenure: A Report and Recommendations by the Commission on Academic Tenure in Higher Education* 24 (1973).

The *Statement on Government of Colleges and Universities* provides that decisions on faculty status are the primary responsibility of faculty, subject to review by the chief academic officers with the concurrence of the Board. *AAUP Policy Documents and Reports* 40, 43 (1977 ed.).[1]

The existence of such a multifaceted decisionmaking process has the salutory effect of allowing for maximum flexibility in academic personnel decisions. Because of the possibility for review of decisions at various levels and because of the possibility of changed circumstances, notification of a decision is not necessarily final. The status of a college faculty member who has received notice of nonreappointment may change before the expiration of his or her contract for many reasons. For example, another position may become available, a college's financial situation may improve, or the faculty member may offer new evidence which would justify a

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[1] This *Statement* was drafted jointly in 1966 by the American Council on Education (ACE), The Association of Governing Boards of Universities and Colleges (AGB), and the American Association of University Professors (AAUP), that is, the three leading national organizations of institutions and institutional associations, governing boards, and faculty.

change in the prior negative evaluation. Of particular relevance in the context of the instant case, the existence of multiple review mechanisms always keeps open the possibility of "curing" an alleged procedural or substantive wrong in the decisionmaking process. These facts of academic life support the claim that for purposes of the 180-day period the final decision on reappointment or tenure refers to the expiration of the faculty member's appointment, and not to the date on which some person or body decides that the appointment will expire on that future date.

An understanding of the nature of decisions on renewal or nonrenewal of an academic appointment makes reasonable the claim that the 180-day period should run from the date the contract actually expires. The purpose of issuing notice of the decision at an early date is twofold: to provide adequate time for the faculty member to secure a suitable new position and, if the decision is challenged, to provide full opportunity for review through the college's internal mechanisms. Notice of a negative tenure decision that is contested serves as the starting point for institutional review.

The basic principles governing probation and continuous tenure for faculty appointments at American colleges and universities are enunciated in the *1940 Statement of Principles on Academic Freedom and Tenure*. This document, jointly authored by the American Association of University Professors and the Association of American Colleges and endorsed by over 100 educational organizations and learned societies, is widely accepted as the norm of the academic community.[2] It states

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[2] Courts have also recognized the normative role played by the 1940 *Statement*. For example, the Court of Appeals for the District of Columbia concluded that the *1940 Statement* represents "widely shared norms within the academic community, having achieved acceptance by organizations which represent teachers as well as organizations which represent

that "during the probationary period a teacher should have the academic freedom that all other members of the faculty have," and it provides that "notice should be given at least one year prior to the expiration of the probationary period if the teacher is not to be continued in service after the expiration of that period."

In order to provide a suitable procedure within a college or university for dealing with a probationary faculty member's allegation that a decision to issue notice of nonretention was based on considerations violative of academic freedom, in 1956 the AAUP formulated procedural standards calling for a hearing before a faculty committee, with the burden of proof resting on the probationer but with the administration of the institution required to come forward with evidence in rebuttal if a *prima facie* case of violation of academic freedom is made.[3] These standards, subsequently amplified and made

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college administrators and governing boards." *Browzin* v. *Catholic University of America*, 527 F.2d 843, 848 n.8 (D.C. Cir. 1975). *Accord*, *Krotkoff* v. *Goucher College*, 585 F.2d 675 (4th Cir. 1978); *Drans* v. *Providence College*, 383 A.2d 1033, 1040 (R.I. 1978). Similarly, the Equal Employment Opportunity Commission, in promulgating final interpretations of the 1978 amendments to the Age Discrimination in Employment Act, incorporated the 1940 *Statement* to define the minimum standards for tenure. According to the Commission: "While tenure policies and practices vary greatly from one institution to another, the minimum standards set forth in the 1940 Statement of Principles on Academic Freedom and Tenure, jointly developed by the Association of American Colleges and the American Association of University Professors, have enjoyed widespread adoption or endorsement." 44 *Federal Register*, No. 226, 66791, 66799 (November 21, 1979).

[3] See *Academic Freedom and Tenure in the Quest for National Security*, *AAUP Bulletin* 54 (1956), reprinted in AAUP POLICY DOCUMENTS AND REPORTS 29 (1977).

applicable to allegations of improper discrimination as well as violations of academic freedom, are set forth in the AAUP's *Recommended Institutional Regulations on Academic Freedom and Tenure*, most recently revised in 1976.[4] In addition, AAUP has issued a more comprehensive *Statement on Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments* (1971),[5] providing norms of academic due process for contested cases of nonreappointment and explaining the distinctions between nonreappointment and dismissal prior to the expiration of an appointment. This Court, in the course of declining to interpret the Fourteenth Amendment as itself requiring certain procedures promulgated by the AAUP and adopted by many colleges and universities, nevertheless singled out these standards for recognition. *Board of Regents* v. *Roth*, 408 U.S. 564 (1972) at 578-79 and n.17.

In cases of notice of intention not to reappoint where academic freedom or discrimination is at issue, the procedures cited above and reflected in the internal regulations of hundreds of colleges and universities call first for preliminary consideration by a faculty committee which will seek to settle the matter by informal methods. Failing settlement, and if that committee so recommends, the case then goes before a faculty hearing committee which follows a formal adjudicative procedure. Representation by counsel is permitted, a verbatim record is kept, and witnesses can be cross-examined. The contesting faculty member is responsible for stating the grounds for his or her allegations and carrying the burden of proof, but upon establishment of a *prima facie* case it is incumbent upon those who decided to issue notice of nonreappointment to offer evidence supportive of their decision. The

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[4] AAUP POLICY DOCUMENTS AND REPORTS at 15.

[5] AAUP POLICY DOCUMENTS AND REPORTS at 8.

findings and recommendations of the faculty hearing committee are transmitted to the institution's governing board, which is responsible for the final decision and to which appeal may be made.[6]

This procedure is necessarily time-consuming, often taking the better part of the terminal year following the issuance of notice and before the expiration of the term of appointment. Often time elapses while mediative efforts are undertaken, most frequently at the beginning of the process but on numerous occasions at later stages. This mediative work is undertaken by appropriate academic officers and bodies within the institution and, when appropriate and feasible, by local chapters of the AAUP or by the AAUP's national staff. The AAUP staff responds annually to approximately 300 cases of contested notice of nonreappointment, and in about 100 of these cases goes beyond offering advice to the parties and assumes an active mediative role.[7] AAUP staff members, and AAUP legal counsel when consulted by attorneys representing faculty members, advise that whenever feasible internal institutional procedures, informal and formal, be employed before resorting to an official complaint to a governmental administrative agency or to litigation in the courts. Over half of the cases mediated by the AAUP end in a mutually acceptable resolution, more often than not involving rescission or modification

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[6] See Recommended Institutional Regulation 10 in AAUP POLICY DOCUMENTS AND REPORTS at 20-21.

[7] See Davis, *Principles and Cases: the Mediative Work of the AAUP*, 58 *AAUP Bulletin* 169 (1970). See also R. HOFSTADTER & W. METGER, THE DEVELOPMENT OF ACADEMIC FREEDOM IN THE UNITED STATES 490-95 (1955); DEVELOPMENTS IN THE LAW—ACADEMIC FREEDOM, 81 Harv. L. Rev. 1045, 1105-1112 (1968); *On Processing Complaints of Discrimination on the Basis of Sex*, 63 *AAUP Bulletin* 231, 234-36 (1977).

of the original notice of nonreappointment. Selected serious cases that remain unresolved despite the AAUP's mediative efforts go to a formal investigation by an *ad hoc* committee of expert professors from other institutions, leading to a published report. Most of these investigated cases end in an acceptable resolution as well, sometimes before a report is published and sometimes afterwards.[8]

In some cases, of course, internal procedures for review are inadequate or nonexistent, mediative attempts are rebuffed, and the faculty member issued notice of nonreappointment knows well within 180 days after receiving the notice that to pursue a complaint of unlawful discrimination he or she has no alternative to filing charges under 42 U.S.C. The extensive cumulative experience of AAUP testifies, however, that in the preponderance of serious complaints internal procedures and informal mediative efforts are not exhausted within 180 days, that typically most or all of the twelve months of remaining post-notice appointment are consumed. To require the filing of 42 U.S.C. charges within 180 days after receipt of notice would in these cases require waiving or aborting internal institutional procedures and mediative endeavors, weakening the opportunities of academic institutions for effective self-regulation, weakening institutional autonomy, and unnecessarily adding to the load of applicable governmental agencies and the courts.

An affirmation of the Third Circuit decision in this case would reinforce the policy of judicial deference to

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[8] For an example of the latter, see *Academic Freedom and Tenure: University of Hawaii*, 51 *AAUP Bulletin* 29 (1969), and *Report of Committee A*, 1968-69, 57 *AAUP Bulletin* 170 (1969), for a case in which AAUP mediative efforts combined with an internal hearing led to rescission of notice of nonreappointment and conferral of continuing tenure.

the internal governance mechanisms of an academic institution without tolerating unlawful behavior or abdicating judicial responsibility. It is after the academic appointment expires, that is, after the internal collegial decisionmaking procedures have run their course, that the external intervention of administrative and judicial bodies is most appropriate. In recent years there has developed a judicial recognition of the nature of academic decisionmaking and review procedures. See Edwards, H., HIGHER EDUCATION & THE LAW 14 (1979). This recognition combines a deference to academic review tempered by the unwillingness to allow discrimination to persist. "Wherever the responsibility lies within the institution, it is clear that courts must be vigilant not to intrude into that determination, and should not substitute their judgment for that of the college with respect to the qualifications of faculty members for promotion and tenure." *Kunda* v. *Muhlenberg College*, Slip. Op. at 31 (3d Cir. 1980). It is the court's task to "steer a careful course between excessive intervention in the affairs of the university and unwarranted tolerance of unlawful behavior." *Powell* v. *Syracuse University*, 580 F.2d 1150, 1154 (2nd Cir. 1978). One way in which courts have steered this course in cases involving nonreappointment or denial of continuous tenure is to view the decision against further appointment as subject to modification prior to the date the existing contract expires. *Johnson* v. *University of Pittsburgh*, 359 F.Supp. 1002 (W.D. Pa. 1973). Given the nature of decisionmaking in colleges and universities, the possibility of such modifications commonly exists. If the decision of the Third Circuit in the instant case is reversed, the staff of the AAUP would be forced to advise hundreds of complainants every year that, in order to protect their legal rights, they must initiate legal action before utilizing the internal procedures which have been carefully developed and refined, and broadly applied, throughout the academic community.

B. *A Faculty Member's Relationship With His Institution Does Not Change After A Denial Of Reappointment Or Tenure.*

A faculty member retains all rights of academic citizenship between notification of nonreappointment and the expiration of his contract of terminal appointment. The last date of appointment, therefore, should mark the date the 180-day period begins to run. Nothing in either of the cases primarily relied upon by petitioner and *amicus* Equal Employment Advisory Council suggests otherwise. *United Air Lines* v. *Evans*, 431 U.S. 553 (1977) and *Electrical Workers* v. *Robbins & Meyers, Inc.*, 429 U.S. 229 (1976). Indeed, neither case even addresses the applicability of the 180-day limit to an employee who completes a terminal contract after a decision not to reappoint. *Evans* is concerned with the seniority of a plaintiff who had been terminated and rehired after several years had intervened. *Electrical Workers* involves the filing of a grievance under a collective bargaining agreement *after* the contract for employment had ended. The relevant statutory occurrence, the court said in *Evans*, was the day the employee was fired: "she stopped work and ceased receiving pay and benefits as of that date." *Id.* at 234. *Electrical Workers* stands for the proposition that the 180-day period begins to run when the date of notice and act of termination coincide. See *Krzyzewsky* v. *Metropolitan Government*, 584 F.2d 802, 806 (6th Cir. 1978). *Electrical Workers* does not address the issue of the status and rights of an employee who, after receiving notice of termination, continues to maintain full employment status for an extended period before actual termination. Unlike many personnel decisions in other sectors of employment, there is no immediate effect of a negative tenure decision on the current contract of employment of an untenured faculty member. There is no immediate severing of the working

relationship a faculty member has with his or her institution, as is ordinarily the case in dismissal. Indeed, according to the 1940 *Statement*, a professor must be offered a one-year terminal contract after a negative tenure decision. During this terminal contract, the professor continues to teach and continues to participate in advising, research, university committee work, and other activities performed by both tenured and probationary colleagues. The professor's relationship with the institution ends when the contract of terminal appointment expires.

Outside of the academic context, cases involving actual termination some time after notification of termination have been distinguished from situations where termination coincides with notification. For example, in a case where an employee was terminated and given two weeks of holiday pay, the Sixth Circuit emphasized: "This case is clearly different from one where a person with a contract of employment is notified that she will be terminated when her contract expires in the future. Under such circumstances, it is reasonable to make the date of actual termination rather than the date of notice the starting point for the 180-day statutory period." *Krzyzewsky* v. *Metropolitan Government*, 584 F.2d 802, 806 (6th Cir. 1978). The *Krzyzewsky* principle ought to apply *a fortiori* to academic employment. The Second Circuit has held that when a university professor received notice of nonrenewal on May 15, 1972, and the employment contract ended in June, 1973, the discharge was consummated only when the professor left the university. *Egelston* v. *State University at Geneseo*, 535 F.2d 752, 755 (2d Cir. 1976). Likewise, in a case where tenure was denied on May 5, 1972, a federal district court, following *Egelston*, held that the end of the terminal year contract, or at the very least, the time a faculty member received word that the president of the university had reaffirmed the decision to give a terminal year contract, was the date from which

the time period runs. *Cap* v. *Lehigh University*, 433 F. Supp. 1275 (E.D. Pa. 1977).[9]

The mandatory pursuit of a Title VII complaint before the end of a faculty member's employment would call for the expenditure of time, energy, and perhaps money to the potential detriment of one's teaching, research, and university service.[10] If the period of statutory limitations were not to begin until the last day of employment, a professor would be encouraged to resolve the matter internally, without hasty and potentially unnecessary recourse to administrative or judicial bodies. Should the need to file a complaint remain at the end of employment, the later actions in the EEOC or in court would benefit from the potentially better record that would probably be created by the complaint having first been processed within the academic system. Finally, as the Third Circuit pointed out, making the last day of employment the ap-

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[9] Even *Abramson* v. *University of Hawaii*, 594 F.2d 202 (9th Cir. 1979), the case most heavily relied upon by petitioner, does not stand for the view that the date of notice of denial of tenure is the date from which a 180-day time period should run. "[W]hen requests for reconsideration are an ordinary and generally accepted part of the tenure decision process the presidential refusal to overturn a departmental denial of tenure can be considered *the* final denial of tenure." *id.* at 209. Thus, the final denial might not be viewed as the issuance of notice if additional institutional review were possible. The Ninth Circuit, therefore, remanded the case to see if such review was an accepted part of the tenure process. The *Abramson* court not only does not state that the date of notice begins the running of the time period, it also recognizes the significance of the internal review procedures in such matters.

[10] *Amicus* AAUP agrees with the Third Circuit that an aggrieved professor might want to file earlier. Such earlier filing ought to be permissive, not mandatory. *Delaware State College* v. *Ricks*, 605 F.2d at 713.

propriate day from which to mark the time period gives a "bright line guide" to the EEOC, the courts, and the parties. *Delaware State College* v. *Ricks*, 605 F.2d at 712-13. The college would be on notice that any potential Title VII claim would have to be made no later than 180 days after the term of employment ends.

II. Even If The 180-Day Time Period Is Held Not To Run From The Date Of The Expiration Of A Terminal Contract, The Running Of The Period Ought To Be Tolled Until That Date.

The 180-day time period ought to be looked upon as a statute of limitations and hence subject to equitable tolling. Therefore, even if the statutory time period begins to run before the date employment ends, the running of the limitation period ought to be tolled until that date. As the Fifth Circuit pointed out:

> The *ratio decidendi*, . . ., of the leading cases dealing with timing requirements in general under the Act compels the conclusion that the ninety day requirement is not "jurisdictional" in the sense that compliance with it *vel non* determines the jurisdiction of the district court, without respect to any of the other circumstances in a particular case. We accept the view that the requirement should be analogized to statutes of limitations. Equitable modifications, such as tolling and estoppel, that are applied to them should also be applied here. The Act contemplates that complaints initiating EEOC proceedings will be brought in the first instance by laymen. It is reasonable, therefore, for courts to refuse to apply technical rules of common law pleading to charges filed initially with the Commission . . . and, of course, remedial legislation such as Title VII of the Civil Rights Act of 1964 is entitled to the benefit of liberal construction. *Reeb* v. *Economic Opportunity Atlanta, Inc.*, 516 F.2d 924, 928 (5th Cir. 1975).

Tolling a statute of limitations has been viewed as appropriate when it effectuates the Congressional purpose

behind the entire statute. "The basic question to be answered in determining whether, under a given set of facts, a statute of limitation is to be tolled, is one of legislative intent whether the right shall be enforcible after the prescribed time." *Burnett* v. *New York Central RR Co.*, 380 U.S. 424, 426 (1965). The policy behind statutes of limitation supports the view that the Title VII 180-day time period can be tolled until the termination of employment. As this Court recently stated:

> Statutes of limitation, which 'are found and approved in all systems of enlightened jurisprudence' . . . represent a pervasive legislative judgment that it is unjust to fail to put the adversary on notice to defend within a specified period of time and that 'the right to be free from stale claims in time come to prevail over the right to prosecute them.' These enactments are statutes of repose, and although affording plaintiffs what the legislature deems a reasonable time to present their claims, they protect defendants and the courts from having to deal with cases in which the search for truth may be seriously impaired by the loss of evidence, whether by death or disappearance of documents, or otherwise. *United States* v. *Kubrick*, —— U.S. ——, 62 L.Ed. 2d 259, 266 (1979).

Given that the Civil Rights Act of 1964 is a humane and remedial Act which promotes accommodation, the Congressional purpose behind Title VII time limitations has been stated as follows:

> The procedures thus mandated exist not for their own sake, but rather, in the furtherance of substantive purposes: the promotion of dispute resolution through accommodation rather than litigation, . . . and the expeditious handling of complaints, . . . Therefore, although compliance with these requirements is a jurisdictional prerequisite to maintenance of a civil action . . . the rigid insistence on meticulous observance of technicalities unrelated to any substantive purpose is inappropriate. *Weise* v. *Syracuse University*, 522 F.2d 397 (2nd Cir. 1975).

Numerous courts have held that there are circumstances in which it is appropriate to interrupt or delay the section 2000e-5(e) time period for filing a complaint beyond the specified date of the alleged unlawful activity. Tolling may be justified during the pendancy of an action before a state court which had jurisdiction over the subject matter of the suit, but which was the wrong forum under state law. The running of the 180-day period might justifiably be deferred until the claimant knew or should have known the facts which would give rise to his or her Title VII claim. Tolling may be appropriate when the EEOC misleads a complainant about the nature of his or her rights under Title VII. *Chappell* v. *Emco Machine Works Co.*, 601 F.2d 1295 (5th Cir. 1979). Where the policies of the Civil Rights Act are effectuated and where there is no harm done to the defendant, the tolling policy ought to be applied in the case of a faculty member who has been issued notice of nonreappointment, whose academic status will not change during the period of the terminal contract, and who has available avenues of institutional review of the adverse decision.

It should be observed that the 180-day period is an extremely short period in the range of statutes of limitations. It could not be contended that if the running of the 180-day period were to begin on the date when employment ceases, witnesses' memories would have faded, documentary evidence would have become unavailable, or that the institution's ability to defend would be significantly prejudiced. Few claims grow stale in 180 days. None of the purposes underlying statutes of limitations would be impaired; on the contrary, it is more likely that a full ripe record will support adjudication of a claim that has become mature upon termination of employment.

In the case of the academic employment relationship, because of the possibility of a modification in a negative decision up until the time of the expiration of the contract, and because of the change of status that might

result from a mandatory filing while one still enjoys all of the prerogatives of an academic position, equitable tolling of the limitation period is justified. Furthermore, none of the defendant's rights protected by a statute of limitations are in jeopardy if the 180-day period runs from the date of expiration of the employment contract. The defendant college is on notice that it might have a Title VII claims filed against it within 180 days after a professor's employment ceases. There is a time certain known by all parties after which no claim can be filed. There is the opportunity for accommodation through widely accepted procedures for review of the decision against retention. And finally, rather than a likely loss of evidence, there is a greater likelihood that during the period between notice of termination and actual termination internal review procedures will produce a superior record to that which would exist were the complainant to go outside the academic system earlier. Therefore, even with the later filing date, the 180-day period fulfills the purpose for which it is designed, and the substantive policy of dispute resolution is enhanced.

CONCLUSION

For the reasons outlined in this brief, *amicus curiae* AAUP respectfully urges that the judgment of the United States Court of Appeals for the Third Circuit be affirmed.

Respectfully submitted,

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